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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 JOHN J. SHEFCIK,

13 Plaintiff,

14 v.

15 KING COUNTY,

16 Defendant.

Case No. C08-5329 RJB/KLS

REPORT AND
RECOMMENDATION

NOTED FOR:
September 12, 2008

17 This case has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28
18 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff filed a proposed complaint, but failed to pay a filing
19 fee of \$350.00 or submitted an application to proceed *in forma pauperis*. Plaintiff was ordered to pay the
20 filing fee or to submit an application to proceed *in forma pauperis*. (Dkt. 6). Plaintiff has not done so.
21 Instead, he objects to the Court's jurisdiction, insists that his case is a "removed" action from Pierce
22 County Superior Court, and now requests that the Court transfer his file to the District Court for the
23 Northern District of California. (Dkt. # 7).

24 **DISCUSSION**

25 On May 13, 2008, Plaintiff filed a proposed complaint, claiming damages for the alleged unlawful
26 seizure and forfeiture of property related to a search warrant executed in or about July 2000. (Dkt. # 1)
27 Plaintiff entitled his document "Notice of Removal of Civil Action" and the heading at the top of his
28 pleading states that it is to be filed in the "United States District Court Western District of Washington at

1 Seattle.” *Id.*

2 Plaintiff did not pay the \$350.00 filing fee nor did he submit an application to proceed *in forma*
3 *pauperis*. *Id.* On May 23, 2008, the Clerk sent Plaintiff a letter notifying him that he had to either pay the
4 filing fee or submit an application to proceed *in forma pauperis* by June 23, 2008 or his case could be
5 dismissed. (Dkt. # 2). In response, Plaintiff submitted a letter to the Clerk, stating that he had “expressly
6 conferred jurisdiction on the “United States District Court for the Western District of Washington at
7 Seattle (not Tacoma),” and instructed the Court Clerk to immediately cancel the action in Tacoma and
8 reinstate the case “properly as a removal of civil action in Seattle.” (Dkt. # 3).

9 Plaintiff also filed a “Notice/Copy of Writ of Prejudice Against the United States District Court at
10 Seattle” (Dkt. # 4). In this filing, Plaintiff asserts that the “Interstate Compact Act with the State of
11 California” mandates that the action he filed must be transferred to the State of California because the
12 underlying action arises from events which took place before, during and after his extradition from
13 California for criminal proceedings. *Id.*, p. 2.

14 On July 25, 2008, Plaintiff was ordered to pay the \$350.00 filing fee or submit an application to
15 proceed *in forma pauperis* with his lawsuit in this Court. (Dkt. # 6). Plaintiff was advised that his case
16 was assigned to the this District Court sitting in Tacoma because it has jurisdiction over cases filed by
17 prisoners at the Stafford Creek Corrections Center where Plaintiff indicates that he is currently housed.
18 (Dkt. # 1). Plaintiff was also advised that there is no legal basis for removal of a Section 1983 case filed
19 in this District to the State of California. *Id.* Finally, Plaintiff was advised that if he desired to file his
20 case in the State of California, he was free to do so at any time. *Id.* As he had no active case in this
21 District, he was free to either pay the filing fee or file an application to proceed *in forma pauperis*. If he
22 chose to submit an application, Plaintiff was advised that he was also required to submit a written
23 acknowledgment and authorization pursuant to 28 U.S.C. § 1915(b) and a written consent form pursuant
24 to Local Rule CR 3(b). *Id.* The Court provided Plaintiff additional time, until August 8, 2008 to pay the
25 filing fee or submit the required information.

26 On August 5, 2008, Plaintiff responded to the Court’s Order, again insisting that this Court erred
27 when it did not file his complaint in Seattle and when it improperly denoted his “removed” action as a
28 civil rights complaint. (Dkt. # 7, pp. 2-3). Plaintiff also referenced a criminal complaint filed on May 5,

1 2008 in this Court in support of his argument that Seattle is the appropriate venue for his case.

2 In that case, No. MC08-5008RBL, Plaintiff filed a complaint against the Pierce County Superior
3 Court Clerk complaining of various violations by the Clerk of the Freedom of Information Act and the
4 Washington State Public Records Act. (Dkt. # 2 therein). Plaintiff requested the Court to convene a
5 Grand Jury to investigate the Pierce County Court Clerk for violations of 18 U.S.C. § 241. *Id.* The Court
6 dismissed Plaintiff's complaint on the grounds that a private citizen can neither bring a direct criminal
7 action against another person nor can they petition the federal courts to compel the criminal prosecution
8 of another person. *Id.*, p. 2.¹

9 Plaintiff states that he filed a "Writ of Prejudice/Writ of Removal" with the U.S. District Court for
10 the Northern District of California at San Jose on July 9, 2008, Case No. CV08-3303-MHP. (Dkt. # 7, p.
11 4). Apparently, Plaintiff has paid the filing fee in that case. *Id.* Plaintiff now requests this Court to close
12 this case and transfer any and all files to the District of California.

13 Plaintiff has no active case in this District as he has never filed an application to proceed *in forma*
14 *pauperis* or paid a filing fee. Moreover, Plaintiff's argument that his case was properly removed to this
15 Court is without merit. Pursuant to 28 U.S.C. § 1446, a civil action may be removed by the **defendant or**
16 **defendants** to the district court within thirty days after receipt of the initial pleading, or thirty days after
17 the amended pleading, which sets forth the claim for relief upon which such action or proceeding is
18 based. Based on the documents submitted by Plaintiff, it appears that Plaintiff filed a complaint in Pierce
19 County, Washington four years ago. (Dkt. #1-2, pp. 13-22).


20 CONCLUSION

21 As Plaintiff has failed to pay a filing fee, submit an application to proceed *in forma pauperis* and
22 as there is no basis for removal under 28 U.S.C. § 1441, *et seq.*, the undersigned recommends that this
23 action be dismissed. Plaintiff's request to transfer this case and/or files to the Northern District of
24 California should be denied. A proposed order accompanies this Report and Recommendation.

26
27 ¹Plaintiff states that the Ninth Circuit found that his appeal from dismissal of the criminal complaint
28 in Case No. MC08-5008RBL was clearly not frivolous. The record does not reflect such a finding. As of
July 18, 2008, Plaintiff's *in forma pauperis* application before the appellate court was still pending. *See* Dkt.
9, Ninth Circuit Case No. 08-35491.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
2 parties shall have ten (10) days from service of this Report and Recommendation to file written
3 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections
4 for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by
5 Rule 72(b), the Clerk is directed to set the matter for consideration on **September 12, 2008**, as noted in
6 the caption.

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8 Dated this 19th day of August, 2008.

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12 Karen L. Strombom
13 United States Magistrate Judge
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